

**Summary of Maria Riojas, et al. v. Elaine Chao, Nowell Borders, et al., DR07CA058**  
**(W.D.Tex.) filed 10/9/07**

Nineteen Texas farmworkers and one H-2B foreign guestworker filed suit on October 9, 2007, in the Western District of Texas, Del Rio Division, to challenge the U.S. Department of Labor's operation of the H-2A and H-2B guestworker programs, and the employment practices and illegal guestworker importation scheme of Nowell Borders, LP, Mata Trucking Company, Inc., and Martinez Packing Company, aided and abetted by attorney Mehron Azarmehr and agent David Donaldson, to import over 400 temporary foreign workers during the onion and watermelon seasons from 2001 to 2007 in South and West Texas. The employers oversee field harvesting and produce packing operations. The plaintiffs are represented by Texas RioGrande Legal Aid (TRLA) attorney Javier Riojas and private Del Rio attorney Jack Stern.

Plaintiffs seek damages as well as injunctive and declaratory relief requiring Defendants to comply with duties owed Plaintiffs pursuant to the Immigration and Nationality Act (INA), and its implementing regulations, the Administrative Procedures Act, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA), the Wagner Peyser Act, the Racketeer Influenced and Corrupt Organizations Act (RICO), the Fair Labor Standards Act (FLSA), the Federal Labor Law of Mexico, and Title VII of the Civil Rights Act (Title VII).

The suit alleges that the companies manipulated the visa programs to obtain cheap foreign labor and avoid providing H-2A visa benefits like housing, transportation, and meals to workers. Though hundreds of United States workers applied for the positions, the companies refused to hire almost all of them. The Department of Labor is named as a defendant for failing to protect United States workers by not verifying reports that they were unwilling to take the jobs. Plaintiffs also challenge DOL's use of guidance letters to administer the H-2B program without rules subject to notice and comment.

According to TRLA employee and Equal Justice Works Fellow Jake Wedemeyer, "These companies purposefully manipulated events so that they could hire cheap foreign labor. They violated the rights of U.S. workers so that they could take advantage of foreign workers." The companies applied for guestworker visas using the H-2B program that is designed for nonagricultural employment. The program has fewer recruiting requirements than the H-2A agricultural visa program which the companies should have used and would have required the recruitment of domestic workers at higher wages.

As Wedemeyer explains, the choice to use the H-2B program and hire foreign guestworkers was both illegal and unnecessary, particularly in areas where local unemployment rates are higher than state and national averages. Congress is currently considering additional H-2B protections to ensure that U.S. workers are given employment preference over foreign guestworkers. Congress is also considering whether to increase the H-2B visa cap as part of the Defense bill.

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